

**November 27, 2002**

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In the Matter of

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3. I hold a Bachelor of Arts degree from the University of Michigan in Ann Arbor, and a Master of Management degree from the Kellogg School of Business at Northwestern University.

4. I have been with AT&T since 1982. In the course of my career, I have worked in various local exchange supplier management positions and in a wide variety of engineering and finance positions. In 1995, I managed AT&T's Total Services Resale and Loop Resale operational discussions with Ameritech. In 1996, I was Program Manager - Negotiations Support in AT&T's Central States region. In that position, I was responsible for supporting the executive team that led AT&T's interconnection negotiations with Ameritech and provided subject matter expertise on a number of local issues. In addition, from late 1996 until April 1999, I also acted as AT&T's primary contact with Pacific on all operations support system and operational issues associated with AT&T's market entry in the state of California.

#### **I. PURPOSE AND SUMMARY OF DECLARATION**

5. The purpose of this Supplemental Declaration is to respond to certain issues raised by Pacific in its Reply Comments regarding Pacific's performance data which purportedly demonstrate checklist compliance.<sup>1</sup> Pacific's Reply Comments are littered with ill-conceived arguments which, *inter alia*, distort AT&T's positions, raise new issues that Pacific failed to address in its initial application, ignore the statutory framework against which Pacific's performance must be assessed, inappropriately ascribe to AT&T sinister motives, entreat the Commission to bless its Application based upon promises of improved performance, and are belied by Pacific's admissions in this record.

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<sup>1</sup> See Reply Comments of SBC In Support of In-Region InterLATA Relief in California ("Pacific Reply").

6. Part II(A) responds to Pacific's Reply Comments which challenge AT&T's arguments regarding the defects in the PriceWaterhouseCoopers ("PWC") performance measurement audit. Pacific contends that AT&T's arguments should not be credited because AT&T, before submitting its comments in this proceeding, never complained that the PWC audit was somehow deficient. Pacific's arguments are totally devoid of merit. As Pacific well knows, long before Pacific filed its Section 271 Application before the Commission, AT&T repeatedly argued in proceedings before the California Public Utilities Commission ("California PUC") that the fundamental infirmities in the PWC audit preclude a finding that Pacific's data are accurate.

7. Part II(B) explains that Pacific's attempt to rely, for the first time in its Reply Comments, on the OSS Test and data replication conducted by Cap Gemini Ernst & Young ("CGE&Y") as probative evidence that Pacific's performance data have been validated should be rejected. In its initial application, Pacific contended that its performance data have been validated as a result of a PWC audit, so-called "re-audits" conducted by PWC, and business-to-business data reconciliations between Pacific and the CLECs. The complete-when-filed rule bars Pacific from arguing on reply that Pacific's performance data have been validated as a result of the OSS Test and supposed data replications performed by CGE&Y. Even if Pacific could properly raise the CGE&Y OSS Test in these circumstances, that test did not and could not validate Pacific's data. Indeed, the Test Administrator and CLECs found numerous discrepancies in Pacific's data. Importantly, CGE&Y never audited Pacific's retail data because Pacific never provided the retail raw data detail in a format that the auditor could assess.

8. Part II(C) addresses Pacific's claims that any concerns that AT&T has raised regarding the unreliability of Pacific's reported data results are baseless because: (1) AT&T has never requested a "mini-audit"; (2) AT&T, before filing its comments, never broached the issue of improper data exclusions; and (3) AT&T has never alleged that the raw data underlying Pacific's results for AT&T demonstrate that Pacific's self-reported data are inaccurate.

9. AT&T has not funded a mini-audit (which is extremely limited in temporal and measurement scope) because: (1) after the results of the third-party test revealed serious issues regarding the accuracy and integrity of Pacific's data, AT&T reasonably expected that a comprehensive audit of Pacific's data would be conducted as part of the Section 271 process in which Pacific bears the burden of proving the accuracy of its data; and (2) AT&T's commercial presence in California was not significant enough to warrant a mini-audit prior to its UNE-P entry into the residential market on a mass market basis in August. Pacific also turns a blind eye to the fact that AT&T, other CLECs and Pacific are currently discussing whether an annual audit of Pacific's data should be conducted.

10. Pacific is also wrong when it contends that AT&T raised, for the first time in its Comments, issues relating to Pacific's improper exclusions of data based upon highly questionable disposition codes. Pacific conveniently ignores that, when AT&T recently asked Pacific to supply the raw data underlying Pacific's reported results, AT&T indicated that it was trying to determine if Pacific was improperly excluding trouble reports from its data.

11. Equally unavailing is Pacific's suggestion that AT&T can somehow fully validate the accuracy of Pacific's performance results by reviewing Pacific's raw data. Pacific's

raw data provided to AT&T do not contain retail data. Even if Pacific provided the raw retail data to AT&T, AT&T has no way of evaluating the accuracy of Pacific's retail results. Because Pacific refused to provide usable raw retail data during the OSS Test, CGE&Y never validated the accuracy of Pacific's retail data. To date, Pacific's retail data have never been audited. Thus, it is disingenuous for Pacific to suggest that AT&T can somehow verify the accuracy of Pacific's reported results simply by examining Pacific's raw data.

12. Part III addresses a variety of Pacific's rejoinders to the CLECs' claims regarding Pacific's performance failures which are evidenced in Pacific's self-reported data. Thus, for example, Pacific contends that: (1) AT&T's analysis of its performance results for Measure 15A is fatally flawed because AT&T has ignored inherent defects in the underlying measure; (2) AT&T has gamed the process by submitting bogus loop qualification requests designed to burden Pacific's systems and ensure performance misses; (3) XO's arguments regarding Pacific's failure to perform at parity in meeting repair appointments are meritless because the differences in performance results are solely attributable to the high percentage of retail "test okay" ("TOK") and "no trouble found" ("NTF") trouble tickets; (4) trouble rates on UNE-P orders will be reduced as a result of system improvements Pacific is developing; and (5) AT&T has mischaracterized its actual performance on Measure 21. Pacific's arguments are specious.

13. Pacific's argument that AT&T has improperly ignored inherent defects in Measure 15A when analyzing Pacific's performance is nothing more than a strawman designed to divert attention from Pacific's failure to satisfy its burden of proving that its performance disparities are attributable to metric flaws.

14. Equally infirm is Pacific's contention that AT&T has engaged in a nefarious scheme to game the process by saddling Pacific with numerous, bogus loop qualification requests to assure that Pacific failed Measure 1 (Average Response Pre-Order Mechanized Loop Qualification). Pacific's Reply Comments suggest that AT&T developed this sinister plot so that it could use these performance misses against Pacific in the Section 271 proceeding and also force Pacific to incur penalty payments for poor performance that AT&T set in motion. AT&T has not engaged and would not engage in such tactics. AT&T submitted to Pacific's corporate headquarters address pre-order loop qualification requests to test the functionality of the pre-order interface. Once Pacific alerted AT&T that these requests were burdening its systems, AT&T dismantled the program that was sending these queries. Moreover, Pacific's claims of AT&T's sinister motives are belied by AT&T's offer to discuss mitigation of penalties that may be due to AT&T's queries, and the fact that AT&T has not cited Pacific's misses under Measure 1 as evidence of poor performance.

15. Pacific's claims that its repair appointments results are out of parity because of the substantial volume of retail TOK and NTF troubles are rather curious. Pacific's affiliate, SWBT, has complained to AT&T that it was forced to create a new exclusion code and to exclude tickets that AT&T believed should have been closed out as TOK and NTF because, if it had not done so, it would have been out of parity.

16. Additionally, Pacific's contentions that system improvements should reduce troubles reported for UNE-P orders should not be credited. These claims are nothing more than promises which are entitled to no weight. Moreover, Pacific's system improvements contain certain flaws that could adversely impact Pacific's performance for CLECs.



17. Furthermore, Pacific cannot seriously contend that, in asserting that Pacific failed the parity standard on Measure 21, AT&T distorted its performance results. Indeed, Pacific's claims are belied by Pacific's own admissions in its Application in which it explicitly acknowledged that it had failed to perform at parity on this measure.

## **II. PACIFIC HAS NOT DEMONSTRATED THAT ITS DATA ARE ACCURATE**

### **A. The PWC Audit Does Not Demonstrate That Pacific's Data Are Accurate.**

18. As AT&T explained in its opening comments, because of the fundamental infirmities in the PWC audit, Pacific cannot legitimately rely on that audit as proof that its data are accurate. Pacific contends, however, that AT&T's arguments should not be credited because AT&T waited until this proceeding to raise any issues regarding the defects in the PWC audit.<sup>2</sup> Pacific's arguments border on the frivolous.

19. Well before Pacific filed its Section 271 Application with this Commission, AT&T repeatedly complained about the inherent flaws in the PWC audit. On April 5, 2000, AT&T filed comments on SBC's Supplementary 271 Compliance Filing in which it discussed the "significant and demonstrably inadequate nature of the PWC audit itself."<sup>3</sup>

20. Similarly, on September 29, 2000, AT&T filed before the California PUC its Pre-Hearing Conference Statement Pursuant to the Assigned Commissioner's September 15,

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<sup>2</sup> See Reply Affidavit of Gwen S. Johnson ("Johnson Reply Aff.") ¶ 65 (suggesting that AT&T never challenged the sufficiency of the PWC audit after the release of the PWC report).

<sup>3</sup> Comments of AT&T Communications of California, Inc. (U 5002 C) In Response to SBC/Pacific Bell's Supplementary 271 Compliance Filing, Docket Nos. R.93-04-003, I.93-04-002, R.95-04-043, I.95-04-044, California PUC, April 5, 2000 at 23.

2000 Ruling in which it argued that the deficiencies in the PWC audit precluded any finding that Pacific's data are accurate and reliable.<sup>4</sup> On March 2, 2001, AT&T filed Comments on the Final Report of Pacific's OSS Test in which AT&T pointed out that the PWC audit was fundamentally flawed because, *inter alia*, it "did not systematically determine if the retail statistical data Pacific reports on its CLEC website has been calculated correctly or whether the underlying data"<sup>5</sup> are reliable.

21. On August 23, 2001, AT&T filed comments in opposition to Pacific's renewed motion for an order that it had fully satisfied the Section 271 checklist in which it argued that the PWC audit was so superficial and limited in scope that it could not and did not validate the accuracy of Pacific's data.<sup>6</sup> Thus, Pacific's contention that AT&T waited until this proceeding to challenge the sufficiency of the PWC audit is patently frivolous.

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<sup>4</sup> Pre-Hearing Conference Statement of AT&T Communications of California, Inc., (U 5002 C) and XO California, Inc. (U 5553 C) Pursuant to the Assigned Commissioner's September 15, 2002 Ruling, Docket Nos. R.97-10-016, I.97-10-017, California PUC, September 29, 2000 at 3 (noting that the PWC attestation audit "failed to adequately examine and reconcile Pacific's data," and that "such an audit could not possibly provide the assurance that the CLECs or the Commission would need about the accuracy and reliability of the performance measurement data, much less meet the formal requirements of Section 271").

<sup>5</sup> Joint Opening Comments of AT&T Communications of California, Inc., WorldCom, Inc., XO California, Inc. and Pac-West Telecom, Inc. on the Final Report of the Pacific Bell Operations Support Systems – The Final Report for Test Generation Services in Relation to Pacific Bell's Operations Support System, Dockets R.93-04-003, I.93-04-002, R.95-04-043, I.95-04-044, California PUC, March 2, 2001 at 101-102.

<sup>6</sup> Comments of AT&T Communications of California, Inc. in Opposition to Renewed Motion of Pacific Bell Telephone Company For An Order That It Has Satisfied the Requirements of the 14-Point Checklist in Section 271 of the Telecommunications Act of 1996, Docket Nos. 93-04-003, I.93-04-002, R.95-04-043, I.95-04-044, California PUC, August 23, 2001 at 108-109, 111-113.

**B. THE CGE&Y Audit Does Not Demonstrate That Pacific's Data Are Accurate.**

22. In Pacific's opening brief and the Affidavit of Gwen S. Johnson, Pacific asserted that Pacific's performance data have been validated through: (1) an initial audit that PWC conducted; (2) "supplemental re-audit" work that PWC performed; and (3) various business-to-business data reconciliations between Pacific, AT&T and other CLECs.<sup>7</sup> Notably, in its opening brief and the accompanying declaration of Gwen Johnson, Pacific did *not* assert that its performance data had been validated through any testing conducted by CGE&Y. However, in her Reply Affidavit, Ms. Johnson now belatedly asserts (albeit in passing) that Pacific's performance data have been validated as a result of:

- OSS third-party testing conducted by Cap Gemini/Ernst & Young
- Replication of results conducted by Cap Gemini/Ernst & Young.<sup>8</sup>

23. These arguments should be accorded no weight because they violate the complete-when-filed rule. Putting this procedural error aside, Pacific cannot seriously contend that the CGE&Y OSS Test confirmed the validity and accuracy of Pacific's performance data. The OSS Test proved nothing of the sort.

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<sup>7</sup> Affidavit of Gwen S. Johnson ("Johnson Aff.") ¶¶ 200-218. *See also* Pacific Brief at 106-108 (citing the Johnson Affidavit and noting that Pacific's data have been validated by an independent third-party audit conducted by PWC and data reconciliations with CLECs).

<sup>8</sup> Pacific has not explained precisely what it means when it refers to the "replication of results conducted" by CGE&Y. In all events, because of the fundamental defects in the CGE&Y OSS Test, including the audit's failure to validate Pacific's retail data, the audit cannot and does not establish the accuracy of Pacific's reported data.

24. AT&T and other CLECs filed lengthy and detailed comments regarding the results of the OSS Test.<sup>9</sup> During State proceedings, AT&T pointed out that the data tracking and validation that the TAM actually conducted fell far short of the requirements of the Master Test Plan and failed to conform to sound statistical methodologies. However, even the limited data reconciliation that the TAM conducted revealed numerous discrepancies that the TAM never reconciled.

25. Indeed, the TAM was unable to reconcile its data with Pacific's reported data for orders that the Test Generator ("TG") (acting as pseudo-CLECs) submitted. For example, 36% of the orders the TG submitted were omitted from Pacific's self-reported data. Additionally, there were orders in Pacific's reported pseudo-CLEC data that the Test Generator did not have a record of submitting. Pacific even reported a negative number of pseudo-CLEC orders (not zero orders, but rather a negative number of orders) for certain submeasures for certain months.

26. The TAM also expressed concerns about the reliability of Pacific's standard deviation files that were used to determine any statistically significant differences between Pacific's performance for retail customers and that provided to CLECs. Ironically, during the OSS Test, there were even discrepancies between the records generated by the TAM

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<sup>9</sup> See Joint Opening Comments Of AT&T, *et al.*, On The Final Report Of The Pacific Bell Operations Support Systems The Final Report For Test Generation Services In Relation To Pacific Bell's Operations Support System ("OSS Test Opening Comments") dated March 2, 2001; Joint Reply Comments Of AT&T, *et al.*, On The Final Report Of The Pacific Bell Operations Support Systems The Final Report For Test Generation Services In Relation To Pacific Bell's Operations Support System ("OSS Test Reply Comments") dated March 9, 2001.

and the TG. The CLECs also discovered mathematical errors and discrepancies in the way in which the TAM aggregated data for the pseudo-CLECs that submitted orders during the OSS Test. Furthermore, portions of the OSS Test data that were necessary in conducting statistical analyses of performance results were missing.

27. Critically, the TAM never assessed the reliability of Pacific's retail data because Pacific failed to provide its data in a format that the TAM could analyze. Indeed, to date, Pacific's retail data have never been audited. As AT&T explained in its Test OSS Comments, Pacific was asked to, but never provided, the raw detail data to support its summary statistics on which the reported Z-statistic is based. AT&T also explained that validation of Pacific's retail data is critical because erroneous retail data can skew performance results, stating:

The need for validating Pacific's retail data arise because it is possible for problematic data to reduce the modified Z-statistic without affecting the true level of service that the ILEC is providing its customers. Specifically, the use of the modified Z-test gives an ILEC the incentive to retain erroneous data points that will result in a Z-statistic with a lower value which, in turn represents better service from Pacific to the Commenters. Erroneous data can lower a Z-statistic by either inflating the mean ILEC result or inflating the standard deviation of the ILEC's results. Both types of errors reduce the Z-statistic associated with a given level of service. For example, the Z-statistic could be reduced if Pacific included long interval data points for orders that were actually cancelled or never completed. A data collection process that treated those orders as completed at the end of the month would artificially place a large number of long intervals in Pacific's data. Had Pacific supplied the TAM with Pacific's raw data, the TAM may have been able to notice indications that erroneous data points were affecting the analysis. Indeed, the TAM sought to obtain this data from Pacific, but Pacific did not provide the retail raw data in a format the TAM could read.<sup>10</sup>

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<sup>10</sup> OSS Test Opening Comments at 103.

28. Thus, to date, Pacific's retail data have never been audited. For all of these reasons, the CGE&Y third-party test did not and could not validate the accuracy of Pacific's performance data.

**C. Pacific's Arguments Regarding Mini-Audits And Its Raw Data Are Meritless.**

29. Pacific contends that AT&T's arguments questioning the accuracy of Pacific's data are not credible because: (1) AT&T has never demanded a "mini-audit" of Pacific's data; (2) AT&T raised, for the first time in its Comments, the specter of improper exclusions of data from Pacific's reported results; and (3) AT&T has never contended that the raw data underlying Pacific's results for AT&T are inaccurate. Pacific's arguments cannot withstand analysis.

30. **Mini-Audits.** Pacific contends that AT&T's failure to request a "mini-audit" of Pacific's data underscores the fragility of AT&T's concerns regarding the integrity of Pacific's data.<sup>11</sup> Pacific's argument is demonstrably unsound.

31. Mini-audits – which cover two months of data and no more than three measures/submeasures per CLEC per year – are extremely limited in temporal and measurement scope. CLECs bear the costs of the mini-audits unless the results show that the ILEC's performance results contain material misstatements or the ILEC's procedures are non-compliant. AT&T has not requested a mini-audit because AT&T assumed that a comprehensive audit of Pacific's performance data would be conducted as part of the Section 271 process. Indeed, after

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<sup>11</sup> Johnson Reply Aff. ¶ 69.

the results of CGE&Y's limited and flawed OSS Test explicitly raised questions regarding the accuracy and reliability of Pacific's data, AT&T reasonably assumed that a full audit of Pacific's performance data would be conducted.

32. Moreover, it would have been nonsensical for AT&T to fund and request a "mini-audit" of Pacific's results for AT&T when: (1) AT&T reasonably believed that a comprehensive audit of Pacific's data would be conducted as part of the Section 271 process in which Pacific bears the burden of proving the accuracy of its data; and (2) AT&T's commercial presence in California was not significant enough to warrant a mini-audit prior to its UNE-P entry into the residential market on a mass market basis in August. When a comprehensive audit of Pacific's data did not occur, AT&T raised the issue of the need for an annual audit of Pacific's data. Indeed, Pacific glaringly omits any reference to the current discussions that are underway between Pacific and the CLECs regarding a possible annual audit of Pacific's performance data.

33. **Data Exclusions.** In arguing that Pacific's data are untrustworthy, AT&T pointed out that it discovered in Texas that SWBT was improperly excluding trouble reports based upon a disposition code that it unilaterally created and which is not identified as a proper exclusion under the business rules.<sup>12</sup> AT&T also explained that Pacific's disposition codes in California are highly suspect and give Pacific unfettered discretionary authority to exclude trouble tickets.

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<sup>12</sup> Toomey/Walker/Kalb Declaration ¶¶ 47-49.

34. Pacific claims that AT&T's arguments are baseless because AT&T never raised this issue before filing its comments in this proceeding. However, Pacific ignores that, when AT&T asked Pacific in June 2002 to provide the raw data underlying its performance results, AT&T indicated that it was trying to assess whether Pacific was improperly excluding trouble reports. Thus, Pacific's statement that "this is the first time AT&T has raised this issue"<sup>13</sup> is disingenuous at best.

35. **Raw Data.** Equally infirm is Pacific's contention that AT&T cannot legitimately raise any issues regarding the integrity of Pacific's performance data because AT&T has not alleged that the "raw data relating to Pacific's performance for AT&T" are incorrect."<sup>14</sup> As Pacific well knows, it is impossible for AT&T to validate the accuracy of Pacific's retail data – data that are critical in assessing Pacific's performance on parity measures. Indeed, because Pacific refused to provide the retail raw data in a format that the auditor could use, Pacific's retail data were never audited during the OSS Test. As noted above, Pacific can manipulate its retail data to make its retail performance appear worse than its actual performance. Thus, it is also disingenuous for Pacific to suggest that AT&T's examination of Pacific's raw data could reveal all inaccuracies in Pacific's self-reported data.

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<sup>13</sup> Johnson Reply Aff., ¶ 77.

<sup>14</sup> *Id.* ¶ 61.



### **III. PACIFIC'S PERFORMANCE DATA DO NOT DEMONSTRATE STATUTORY COMPLIANCE.**

#### **A. Pacific Cannot Shift To AT&T The Burden of Proof.**

36. In addressing AT&T's arguments regarding Pacific's performance failures with respect to Measure 15A (Statewide LNP Port Out/Out of Service and Statewide LNP Port Out of Affecting), Pacific contends that "it is less than candid for AT&T to now ascribe Pacific's performance for this submeasure wholly to weakness in Pacific's provisioning process, when AT&T knows full well about the weakness in the measure."<sup>15</sup> Pacific's arguments inappropriately attempt to shift to AT&T the burden of proof in this proceeding.

37. In its Application, Pacific concedes that it "has been unable to meet the 'average of four hours' performance standard for the two submeasures associated with 15A that pertain to LNP . . . ."<sup>16</sup> Pacific also states that "these statistical shortfalls are generally not attributable to shortcomings in Pacific's maintenance procedures [but] rather . . . an unintended

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<sup>15</sup> Johnson Reply Aff. ¶ 38.

<sup>16</sup> Johnson Aff. ¶ 178. Similarly, in its *ex parte* dated November 25, 2002, Pacific provided its performance results for October which show that, for Measure 15A, Pacific failed to meet the benchmark standard for Submeasure 4691400 (LNP Port Out Out of Service) (showing that the average time to restore for CLECs was 5.47 hours) and Submeasure 4691500 (LNP Port Out Service Affecting) (showing that the average time to restore for CLECs was 5.00 hours). *See ex parte* letter from Colin S. Stretch to Marlene H. Dortch dated November 25, 2002 ("November 25 *ex parte*") attaching CD containing CLEC aggregate results. Although Pacific may argue that some of these performance misses are attributable solely to purported flaws in the metric, it is Pacific's burden to provide empirical data demonstrating that these performance disparities are due to metric flaws, rather than deficiencies in its LNP maintenance and repair process. This failure should cause the Commission concern, particularly because the California PUC found serious flaws in Pacific's LNP processes.

flaw in the design of the measures . . . .”<sup>17</sup> Although it is certainly true that Pacific is currently negotiating with CLECs regarding possible revisions to Measure 15A to resolve purported flaws in the measure, it is equally true that Pacific’s Application contains no empirical data demonstrating that its performance misses are attributable solely to alleged defects in the measure.

38. Thus, for example, Pacific contends that, because “CLECs frequently extend the due dates on LNP orders,” Measure 15A captures a high percentage of incidental network troubles, instead of troubles relating to the provisioning process.<sup>18</sup> However, Pacific nowhere quantifies the actual number of troubles captured in its performance results that are attributable to this phenomenon.

39. Moreover, although Pacific contends that AT&T has failed to prove that Pacific’s failures on Measure 15A are due “wholly to weaknesses in Pacific’s provisioning processes,” Pacific ignores that it, rather than AT&T, bears the burden of proving that any performance disparities are attributable to factors beyond Pacific’s control. Indeed, in its *Connecticut 271 Order*, this Commission stated that it “expects that, in its *prima facie* case, in the initial application a BOC relying on performance data will do the following:

- a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;
- b) identify the facial disparities between the applicant’s performance for itself and its performance for competitors;

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<sup>17</sup> Johnson Aff. ¶ 178.

<sup>18</sup> *Id.* ¶ 179.

- c) explain why those facial disparities are anomalous, caused by forces beyond the applicant's control (*e.g.*, competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier's ability to obtain and service customers; and
- d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant's explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.<sup>19</sup>

40. Significantly, although Pacific's Application contains broad conclusory statements regarding the inherent flaws in Measure 15A that impacted its performance results, Pacific has failed to "provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters . . . to evaluate and contest the validity of [its] explanations for performance disparities."<sup>20</sup> Clearly, Pacific possesses the performance data which could resolve any questions regarding the underlying reasons for its performance misses. Since Pacific has elected not to provide such empirical data in its Application, it cannot legitimately contend that its performance misses are due solely to exogenous factors beyond its control or inappropriately shift to AT&T its burden of proof in this proceeding.

**B. AT&T Has Not Gamed the Process to Generate Performance Misses.**

41. Pacific contends that AT&T's "audacity" in challenging Pacific's claims of data accuracy and checklist compliance is "truly remarkable" since AT&T "submitted over 2,200 bogus pre-order loop qualification requests . . . [to] the business address of Pacific's

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<sup>19</sup> *Connecticut 271 Order*, Appendix D, ¶ 7.

<sup>20</sup> *Id.*

corporate headquarters” in order to “negatively impact[] Pacific’s performance for one submeasure” and extract incentive payments from Pacific.<sup>21</sup> Pacific’s arguments are meritless.

42. Pacific first raised the issue of AT&T’s loop qualification requests in a letter dated October 18, 2002. During a meeting with Pacific on October 23 and in a follow-up letter dated October 25, 2002, AT&T explained that, in April 2002, AT&T installed the loop qualification functionality of the CORBA Pre-Order interface and programmed its gateway to transmit CORBA transactions “as a proactive means of confirming that [AT&T’s] interface was up, available and working.”<sup>22</sup> Furthermore, AT&T also explained that, because it was not aware that Pacific “has documented alternative telemetry procedures,” AT&T’s system professionals assumed that these test transactions would “be a simple, non-disruptive and reasonable approach to system connectivity monitoring.”<sup>23</sup>

43. AT&T also conceded that its use of the Pacific corporate headquarters address, which contains a substantial number of circuits, “may have inadvertently caused the CLEC average query response to be significantly higher than the parity average.”<sup>24</sup> Although AT&T is continuing to investigate precisely why the Pacific address was selected, AT&T believes that it is possible that AT&T employees may have simply copied the address from Pacific’s specifications.

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<sup>21</sup> Johnson Reply Aff. ¶ 58 n.50.

<sup>22</sup> Letter from Sarah DeYoung to Dave Young dated October 25, 2002, attached as Attachment 1.

<sup>23</sup> *Id.* at 1.

<sup>24</sup> *Id.*

44. In all events, immediately after Pacific raised this issue, AT&T disabled the program that was transmitting the loop qualification queries to the corporate headquarters address. Furthermore, AT&T also informed Pacific that, unless Pacific proposed an alternative, it planned to use a “single-circuit address to monitor connectivity for this query type” in the future.<sup>25</sup>

45. Given Pacific’s statements regarding the profound impact that AT&T’s loop qualification requests had on its performance, it is rather baffling that Pacific waited over five months before bringing this matter to AT&T’s attention. Significantly, after Pacific raised this issue, AT&T stated that it was willing to discuss a possible mitigation of any remedy payments that Pacific incurred which may be attributable to AT&T’s testing. AT&T also advised Pacific that it should consider conducting a root cause analysis because it appeared to be the most effective and efficient means to discuss mitigation of penalties with other CLECs that may have received payments due to this inadvertent error on AT&T’s part, since loop qualification requests are included within the aggregate CLEC data for Measure 1.

46. Thus, despite Pacific’s statements to the contrary, AT&T did not deliberately program its system to transmit “bogus loop qualification requests” in order to burden Pacific’s systems, cause performance failures, and force Pacific to incur penalty payments. AT&T did not and would not engage in such tactics. Moreover, the mere fact that AT&T has offered to discuss the mitigation of penalty payments that may be attributable to AT&T’s

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<sup>25</sup> *Id.*

conduct belies Pacific's argument that AT&T intentionally engaged in this conduct to guarantee that Pacific incurred penalty payments.

47. At bottom, when stripped of its rhetoric, Pacific's argument is nothing more than a red herring. Implicit in Pacific's argument is the notion that AT&T constructed an elaborate scheme to submit bogus queries that would unduly burden Pacific's systems and force Pacific to miss Measure 1 so that these misses could then be cited as evidence of Pacific's subpar performance to CLECs. If Pacific's argument is taken to its logical conclusion, then it follows that AT&T's comments should have referenced Pacific's failure on Measure 1 as probative evidence of discriminatory performance. Notably, AT&T did *not*, in its comments, reference Pacific's performance on Measure 1 as evidence of discriminatory performance. Thus, Pacific has no sound basis for ascribing to AT&T such sinister motives, and Pacific's argument falls of its own weight.

**C. Pacific's System Improvements Are Unfulfilled Promises Which Could Increase Troubles.**

48. Pacific contends that, in an effort to reduce the number of customer trouble rates for UNE-P orders, it is implementing certain "system improvements."<sup>26</sup> However, it appears that some of these purported system improvements are still in the development stage. As a consequence, Pacific's arguments are nothing more than promises of improved performance which are of no probative value in the context of this proceeding. Moreover, Pacific's system

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<sup>26</sup> Johnson Reply Aff. ¶ 51.

improvements arguably could actually increase, rather than decrease, feature-related customer trouble rates.

49. Thus, for example, Pacific states that it has “developed a report to match all retail orders that are removing features on a line against pending UNE Platform migration orders, to prevent features from being removed from these migrating services.”<sup>27</sup> Pacific’s statement suggests that it has developed procedures to assure that features are never removed when there is a pending UNE Platform migration order. However, if an end-user has a pending order to remove a feature, it appears that the end-user’s order will not be completed as requested if there is a pending UNE Platform migration order.

50. Pacific further contends that it “also is developing additional system upgrades that will allow the Automated Order Generator (“AOG”) system to automatically recap all existing features on a migrating retail service on the UNE-P service order and the retail disconnect order (associated with a UNE Platform migration).”<sup>28</sup> This system upgrade also is cause for concern. Although it is far from clear, it appears that Pacific is programming its systems to transfer all features on a migrating retail service to the UNE-P service order and provision the order without regard to the features the CLEC has specified on the Local Service Request. As a result of this programming, a CLEC customer may not receive all the features it requested.

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

**D. Pacific's Explanation Of The Impact Of TOK/NTF Trouble Tickets Is Flawed.**

51. In addressing XO's argument that Pacific has not performed at parity in meeting repair appointments for CLECs' DSL loops, Pacific contends that the differences in the number of retail and CLEC trouble tickets closed to TOK or NTF account for the difference in performance results. In this regard, Pacific contends that approximately 25 to 30 percent of CLEC trouble tickets and more than 50 percent of retail trouble tickets are closed to "test okay" or "no trouble found."<sup>29</sup> Pacific also claims that, because TOK/NTF trouble tickets "have shorter maintenance durations" and its retail data reflect a higher percentage of TOK/NTF trouble tickets, its "retail results will necessarily reflect fewer missed maintenance commitments and shorter restoral intervals, even when the maintenance process is in parity."<sup>30</sup> Pacific's arguments are rather curious.

52. As noted above, Pacific's affiliate, SWBT, has complained to AT&T that it was forced to exclude maintenance trouble tickets that AT&T believed should have been classified as "test okay" or "no trouble found" because if it had not done so, it would have missed parity standards. These disagreements led to a reconciliation of excluded trouble tickets for Texas, and the filing of a joint affidavit with the Texas PUC. However, Pacific in this instance claims that: the far majority of its retail trouble tickets are TOK/NTF tickets; such tickets have shorter maintenance times; and the inclusion of Pacific's retail TOK and NTF tickets

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<sup>29</sup> Johnson Reply Aff. ¶ 46.

<sup>30</sup> *Id.*



in its performance data will necessarily make it appear that its retail customers receive preferential treatment during the maintenance and repair process.

**E. AT&T Did Not Misrepresent Pacific's Performance Results On Submeasure 21-98001.**

53. Pacific contends that, in Paragraph 77 of the Toomey/Walker/Kalb declaration, AT&T mischaracterized Pacific's performance on "Submeasure 21-95801" by asserting that Pacific failed to achieve "parity" on this measure from December 2001 to June 2002 when a parity standard was never established until August 2002.<sup>31</sup> In embellishing this assertion, Pacific contends that "AT&T's discussion is misleading" because it was not until August that the California PUC determined that the performance standard for Measure 21 is "a parity comparison to lineshared loops provided to SBC Advanced Service Inc. ("ASI")."<sup>32</sup> Pacific's allegations cannot withstand analysis.

54. As a preliminary matter, the sub-metric that AT&T referenced in Paragraph 77 of the Toomey/Walker/Kalb declaration is Submeasure 21-98001 (not Submeasure 21-95801).<sup>33</sup> Putting that to one side, Pacific's own admissions in its Application regarding its

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<sup>31</sup> See Johnson Reply Aff. ¶ 41. Pacific's results included in its November 25 *ex parte* show that Pacific failed Submeasure 21-95801 in October 2002 (showing that the average time to restore for CLECs was 12.06 hours, but 10.01 hours for Pacific's retail customers). Pacific filed its October 2002 results with this Commission on November 25, 2002, and AT&T has not had the opportunity to fully analyze Pacific's performance results.

<sup>32</sup> Johnson Reply Aff. ¶ 41.

<sup>33</sup> Paragraph 77 of the Toomey/Walker/Kalb declaration references Measure 21-98001, not Measure 21-95801. Paragraph 76 in the Toomey/Walker/Kalb declaration mistakenly cites "Submeasure 16-06502-North UNE Sub Loop 2-Wire Digital xDSL capable," instead of

(Footnote continued on the next page)

failure to achieve “parity” on Submeasure 21-98001 underscore the absurdity of its argument that AT&T has somehow distorted its performance on this submeasure.

55. Pacific affirmatively *admitted* in its Application that it failed to achieve “parity” with respect to Submeasure 21-98001 in May and June 2002, and that it finally achieved “parity” in July.<sup>34</sup> Indeed, Pacific detailed its performance on Submeasure 21-98001 from May through July as follows:

In May, the difference in performance for lineshared loops provided to CLECs and those provided to ASI was about five hours (14.79 hours vs. 9.56 hours). In June, the difference was reduced to slightly more than two hours (14.00 hours vs. 11.98 hours). In July, performance was significantly improved. The CLEC interval was reduced to 10.17 hours, four hours shorter than the interval for Pacific’s retail operations (14.47 hours). In this month, the parity standard was achieved.<sup>35</sup>

56. Similarly, Pacific’s “Hit or Miss” Report in its Application includes the performance results for Submeasure 21-98001 from May through July 2002. In that report, Pacific acknowledged that it failed the measure in May and June and passed the measure in July. In assessing its own performance over this three-month period, Pacific admitted that “overall,” it

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“Submeasure 16-06600 (North UNE Loop 4-Wire Digital 1.544 mbpd capable/HDSL”), which shows out of parity conditions in May (11.48 v. 3.93) and July (14.05 v. 6.12).

<sup>34</sup> Johnson Aff. ¶ 128 (stating that “Pacific has not achieved parity in two of the last three months with respect to Submeasure 21-98001”).

<sup>35</sup> *Id.* n. 70.

failed the performance standard during this period.<sup>36</sup> Thus, Pacific itself acknowledged in its Application that it did not “achieve[] parity” on Submeasure 21-98001 in May or June.

57. Furthermore, Pacific’s Application includes the following chart in which:

(1) Pacific acknowledged that Submeasure 21-98001 is governed by a parity standard; (2) Pacific admitted that a T-distribution statistical test applies to the submeasure; (3) Pacific delineated its performance results from August 2001 to July 2002; and Pacific admitted that it did not “pass” the performance standard for this sub-metric from December 2001 through June 2002:<sup>37</sup>

2198001	Statewide		UNE Line Sharing Loop 2 wire Digital xDSL		
A parity measure of averages; low means good service (has log data)					
Date	CLEC	Volume	P*B	Pass?	Test
Aug-01	8.62	75	13.92	Yes	T-Dist(Logs)
Sep-01	8.55	72	15.91	Yes	T-Dist(Logs)
Oct-01	6.85	98	12.07	Yes	T-Dist(Logs)
Nov-01	10.32	107	12.03	Yes	T-Dist(Logs)
Dec-01	14.73	86	12.84	No	T-Dist(Logs)
Jan-02	10.83	116	10.89	No	T-Dist(Logs)
Feb-02	9.85	133	9.43	No	T-Dist(Logs)
Mar-02	10.97	176	9.25	No	T-Dist(Logs)
Apr-02	13.74	128	8.25	No	T-Dist(Logs)
May-02	14.79	131	9.56	No	T-Dist(Logs)
Jun-02	14.00	185	11.98	No	T-Dist(Logs)
Jul-02	10.17	201	14.47	Yes	T-Dist(Logs)

58. As the foregoing makes clear, AT&T did not distort Pacific’s performance results. AT&T simply took Pacific at its word. Given Pacific’s own admissions regarding its performance failure on this metric and its insistence that its performance data are accurate and

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<sup>36</sup> See California 271 Performance Measures Hit or Miss Report, Johnson Aff., Attachment A (2198001) at 29.

<sup>37</sup> Johnson Aff., Attachment B (Measure 2198001).

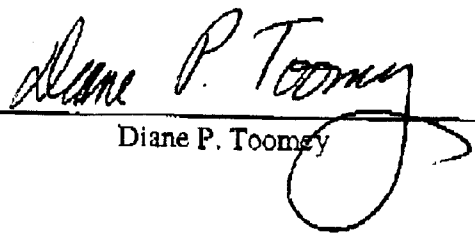
reliable, the absurdity of Pacific's claims that AT&T has mischaracterized its actual performance is self-evident.

### CONCLUSION

Based upon the pool of evidence, Pacific has not demonstrated that its performance data are accurate and trustworthy or that its data show checklist compliance. The PWC audit is riddled with so many defects that it cannot reasonably be relied upon as proof that Pacific's performance data are accurate. Furthermore, Pacific's belated reliance on the CGE&Y OSS test as proof of the reliability of its performance data is misplaced. Pacific's arguments not only violate the complete-when-filed rule, but they also ignore that the OSS Test revealed significant problems with Pacific's performance data. Moreover, because Pacific failed to provide the raw retail data detail, the OSS Test never validated Pacific's retail data. Additionally, Pacific's own performance results show that it has failed to meet parity and benchmark standards. And Pacific's promises to implement procedures to improve its performance should be taken for what they are – unfulfilled commitments which have no probative value in the context of this proceeding.

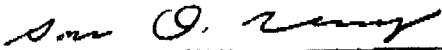
I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on November 27, 2002

  
Diane P. Toomey

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on November 27, 2002

  
\_\_\_\_\_  
Sarah DeYoung

## **ATTACHMENT 1**



Sarah De Young  
Division Manager  
Local Services and Access Management

Room 2107  
705 Folsom Street  
San Francisco, CA 94107  
Phone: 415 442 5506

October 25, 2002

By Email, Fax and First Class Mail

Mr. Dave Young  
Vice President - Industry Markets  
SBC Corp.  
Four Bell Plaza, Room 640  
311 S. Akard  
Dallas, TX 75202

Dear Dave,

This letter is sent to respond to your letter of Friday, October 18 re: AT&T loop qualification requests for California.

As we discussed at the AT&T/SBC Local Leadership Team meeting on Wednesday, October 23, we have investigated these requests and determined that our ECIP III gateway was in fact programmed in late April, 2002 (when we installed the loop qualification functionality of the CORBA Pre-Order interface with SBC/Pacific) to send hourly CORBA transactions, one for each query type, as a proactive means of confirming that our interface was up, available and working. Given that the companies have not discussed nor are we aware that SBC has documented alternative telemetry procedures, this seemed to our system professionals to be a simple, non-disruptive, and reasonable approach to system connectivity monitoring.

However, those of us who are more familiar with performance measurement business rules realize that the San Ramon address probably contains a large number of circuits and may have inadvertently caused the CLEC average query response to be significantly higher than the parity average (i.e. the average experienced by SBC's data affiliate). While we are still investigating how this address was chosen, we are speculating that it may have been copied from examples in specifications provided by SBC.

In any event, the program that was sending these queries was disabled as of 12:00 noon EDT on Monday, October 21. Unless Glen and his team have an alternative telemetry solution to propose, our system professionals plan to select a single-circuit address to monitor connectivity for this query type.

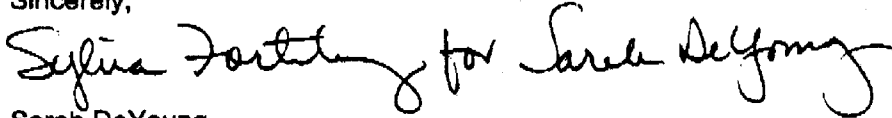


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October 25, 2002 Letter to Dave Young

Finally, it appears that SBC/Pacific has paid penalties for loop qualification misses in June, August and September. While it certainly would have been easier to address this issue had SBC brought it to our attention back in June, AT&T is willing to discuss mitigation of these remedies, as appropriate, and suggests that SBC/Pacific invoke the "Root Cause Analysis" process that was negotiated for this purpose. This will be especially important because of the need to engage all of the CLECs, given that loop qualification queries are included in an aggregated CLEC Performance Measurement (PM 1).

Please let me know if you have questions or need additional information regarding these issues.

Sincerely,

A handwritten signature in cursive script that reads "Sylvia Fortney for Sarah DeYoung".

Sarah DeYoung  
Division Manager –  
Local Services and Access Management

cc: Bill West, AT&T  
Glen Sirles, SBC